

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Warren Havens and Polaris PNT Request for Declaratory Ruling under §§ 1.2 and 1.41 (“Request”)	u Docket Nos. 13-85 and 11-71 FCC letter ruling of April 11, 2017, responding to the Request (“Ruling” or “Order”)
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To: Office of the Secretary
Attn: Chief, Wireless Telecommunications Bureau
Filed: In dockets 13-85 and 11-71

PETITION TO DESIGNATE A PUBLIC NOTICE PERIOD FOR
REQUESTS UNDER 47 USC §405

AND

PETITION FOR CLARIFICATION AND RECONSIDERATION¹
(TOGETHER, THE “RECON”)

Warren Havens, and
Polaris PNT PBC
C/o 2649 Benvenue Ave.
Berkeley, CA 94704
(510) 914 0910

May 11, 2017

¹ Under the Ruling by FCC staff, there does not appear to be, according to FCC staff, other current parties to this proceeding, and therefore, this petition is not being served on any person or entity. However, Petitioners’ position as to affected parties is stated below, and they are effectively served by filing of this Recon in the two dockets listed above.

The undersigned, Warren Havens and Polaris PNT PBC (“Petitioners”) submit the petitions captioned above (together, the “Recon”) of aspects of the FCC letter addressed to Warren Havens dated April 11, 2017 regarding their request for declaratory ruling (the “Request”) (it was not put on any public notice, and has no DA number) (the “Ruling” or “Order”).²

A copy of an email exchange between Petitioners and FCC staff related to this Order and this Recon is provided in Exhibit 1.

The subject decision of the US Court of Appeals for the Third Circuit is cited in the Order and is referenced and incorporated herein (the “Havens-MCLM 3rd Cir. Decision”), as is the Request and its exhibits, and the exhibits to this Recon. The Havens-MCLM 3rd Cir. Decision at issue here is directly related to and parallel to the issues under FCC 11-64, docket 11-71, and docket 13-85 and related licensing actions (together, the “Parallel FCC Matters”) and the Request, Order and this Recon involve the Parallel FCC Matters.

Petitioners have legal interest and standing to submit and prosecute this Recon, for themselves and independent of any other person or entity, for reasons they have shown in their 2017-filed formal pleadings involving Maritime Communications/Land Mobile LLC (“MCLM”) and reasons underlying the Request. Petitioners are not submitting this Recon for any other person or entity.

The Parallel FCC Proceedings involve, *inter alia*, Issue (g) in HDO, FCC 11-64, that deals with whether or not Maritime Communications/Land Mobile LLC (“MCLM”) timely and

² Letter, dated April 11, 2017, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, addressed to Warren Havens at 2649 Benvenue Ave., Berkeley, CA 94707, denying a motion for declaratory ruling filed by Warren Havens and Polaris PNT, PBC.

properly constructed and maintained in operation its site-based AMTS stations. In filings with the FCC, in both 11-71 and under its licenses, MCLM has stated that it allowed its alleged construction records (of its predecessor Mobex Network Services LLC) to be destroyed after it purchased the site-based licenses from MCLM because it no longer needed them.

The Request included, *inter alia*,

... [T]he Commission and its relevant Bureaus and Offices should consider and issue a decision on the legal ramifications of this Third Circuit decision , including with regard to the “issue-g” stage of the docket 11-71 proceeding under the OSC-HDO FCC 11-64 (and related matters in the other dockets above including 13-85) to decide:

- The broad issues posed by this Third Circuit decision are shown below.
- The more narrow issues posed by this Third Circuit decision regarding proceeding 11-71, including if new trial and pre-trial proceedings in 11-71 be held regarding issue (g) that led to decisions by the FCC administrative law judge in that regarding those proceedings?

In this Recon, Petitioners request the following:

Primary Request: That the FCC staff involved with the Order designate a 30-day public notice period for requests under 47 USC §405 for relief regarding the Order (a petition for reconsideration, an application for review, informal relief, or other relief) to be submitted by any party with interest or that believe it may have interest in the matters of the Order (the rights, limitations, and other matters decided on, determined, clarified, modified or otherwise caused by the Order); and that that the FCC serve a copy of this designation action on the Petitioners, MCLM and any other AMTS site-based and geographic licensee, or applicant, that may be affected by the Order. In this regard, see Exhibit 2 hereto: Based upon this Exhibit 2, Petitioner assert the need for and submit this primary request.

Alternative Requests: If the above Primary Request is not denied, then Petitioners request grant of the following alternative requests:

Alternative Request 1: Address and substantially respond to the parts of the Request that were not addressed in the Order. These parts are clear by comparison, and include the parts of the Request involving matters other than those founded on the 47 USC §401(b) claim, and the “Cooperation Orders involving FCC rule 80.385(b), decided in the Havens-MCLM 3rd Cir. Decision. The other matters include those involving 47 USC §§ 201 and 206-208.

Alternative Request 2: Clarify that the parts of the Request that were addressed in the Order (that appears to be two things discussed below), applies the parallel *Havens et al v MCLM et al* matters before the FCC (in dockets 11-71 and 13-85 and related licensing adjudication proceedings) as follows: (1) Is the Havens-MCLM 3rd Cir. Decision binding on the FCC to any degree and if not, what parts are not? (2) Is the Havens-MCLM 3rd Cir. Decision finding that the footnote this decision described in one of the “Cooperation Orders” that stated minimum FCC requirements imposed under its rule 80.385(b) upon site-based AMTS licensees, is not an effective FCC order, due to being located in a footnote, accepted by the FCC or not? If not, then are other footnotes employed by the FCC in the Parallel FCC Matters also invalid, to the extent that they, too, state a right or requirement not set forth in the body of the subject FCC release? (3) Does any part of FCC rule 80.385 or its subsection (b) remain in legal force and effect, if the FCC staff accepts the Havens-MCLM 3rd Cir. Decision? In this regard, Petitioners assert that the Commission proposes, places on public notice, gets public comments on, and enacts a final rule, including this rule, as an whole, not subpart by subpart, and that if a substantial subpart is found to be invalid if ineffective, then the entire rule, or later subpart, may also fail (and a new rule may have to be enacted for the intended purpose, but without the defects that lead to the invalidity or ineffectiveness determination).

(4) That the geographic licensee assumptions, under the NUSCO decision cited in the Order, on case by case basis, is based on the site -based licensee credible assertion of having lawfully constructed and kept in permanent operation the subject site-based licensed station(s) but, outside its control, it did not at the subject time have station records, such as PSI asserted in this NUSCO case that FCC staff accepted. But no such assumptions can be made of any site-based station to protect where the licensee admits that, under its control, the subject station records were destroyed, lost or otherwise became unavailable.

Respectfully submitted,

/s/

Warren Havens, for
Warren Havens, and
Polaris PNT PBC

2649 Benvenue Ave
Berkeley, CA 94704
Phone: 510-848-7797
Fax: 510-740-3412

May 11, 2017

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including any attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically.]

Warren Havens

May 11, 2017



Warren Havens <wrrnvns@gmail.com>

Re: FW: Your letter to me denying dec ruling re the issue(s) I pose, Third Cir decision re 80.385

Warren Havens <wrrnvns@gmail.com>

Thu, May 11, 2017 at 1:55 PM

To: Scot Stone <Scot.Stone@fcc.gov>

Cc: Stanislava Kimball <Stanislava.Kimball@fcc.gov>, Jimmy Stobaugh <Jimmy.stobaugh@outlook.com>

Oh... thank you.

On Thu, May 11, 2017 at 1:50 PM, Scot Stone <Scot.Stone@fcc.gov> wrote:

<https://techcrunch.com/2017/05/08/the-fccs-comment-system-targeted-by-ddos-attacks-during-filing-period-for-net-neutrality/>

From: Warren Havens [mailto:wrrnvns@gmail.com]**Sent:** Thursday, May 11, 2017 4:24 PM**To:** Scot Stone <Scot.Stone@fcc.gov>**Cc:** Stanislava Kimball <Stanislava.Kimball@fcc.gov>; Jimmy Stobaugh <Jimmy.stobaugh@outlook.com>**Subject:** Re: FW: Your letter to me denying dec ruling re the issue(s) I pose, Third Cir decision re 80.385

Can you explain:

"As you may have heard, they have their hands full lately."

On Thu, May 11, 2017 at 1:19 PM, Scot Stone <Scot.Stone@fcc.gov> wrote:

We have sent a copy to be placed in the dockets, but I don't know when it will be viewable in ECFS. As you may have heard, they have their hands full lately.

We are not reissuing the decision.

Scot Stone

Deputy Chief, Mobility Division

Wireless Telecommunications Bureau

From: Warren Havens [mailto:wrnvns@gmail.com]
Sent: Thursday, May 11, 2017 2:38 PM
To: Scot Stone <Scot.Stone@fcc.gov>
Cc: Stanislava Kimball <Stanislava.Kimball@fcc.gov>; Jimmy Stobaugh <Jimmy.stobaugh@outlook.com>
Subject: Re: FW: Your letter to me denying dec ruling re the issue(s) I pose, Third Cir decision re 80.385

Mr. Stone,

Thanks for your prompt response.

Please consider re-issuing the Order with today's date and placing that in dockets 11-71 and 13-85, and if you do that, sending me a copy. The reasons include the following:

I had looked at that rule for this purpose (and often in the past) and court precedents.[1] In my view, the rule and its public-notice requirement deals with a date of actual effective public notice, which needs the item to be provided to the relevant "public" - persons that will or may be affected.[1]

In this case, in my view, there is no question that any FCC issuance, including the subject "Order" as I define that below, that has any legal effect upon a matter that may become at issue before the FCC, or here, that is still at issue before the FCC: certain AMTS site-based licenses vs. surrounding AMTS geographic licenses [2] needs to be provided to the relevant "public" (by a "public notice") - and placing this item, with a new date, in 11-71 and 13-85 would do that (at least for all but PSI, and at least if I am not excluded)[3].

If you decide to re-issue this item, and place that in 11-71 and 13-85, that would seem to solve any issue that any affected or possibly affected party may have with the Order, and its internally stated date, and its "public notice" date, and the right of any party within 30 days to seek any sort of reconsideration.

Thank you,

Warren Havens

[1] See: *Pometheus v FCC* 373 F.3d 372, page 27:

Copy at: <http://www.nyls.edu/wp-content/uploads/sites/141/2013/08/Prometheus-Radio-Project-v.-FCC-II.pdf>.
(items in brackets added):

Our decision to remand the Cross-Media Limits also gives the Commission an opportunity to cure its questionable **[public] notice**. Under the APA, **an agency must publish notice [i.e., issue the "public notice"]** of either the terms or substance of the proposed rule or a description of the subjects and issues involved. 5 U.S.C. § 553(b)(3). We have held that "the adequacy of the notice must be tested by determining **whether it would fairly apprise interested persons of the 'subjects and issues' before the agency.**" *Am. Iron & Steel Inst. v. EPA*, 568 F.2d 284, 293 (3d Cir. 1977)

[2] As well as possible Section 208 filings as indicated by the petition for declaratory ruling, based on the Third Cir decision that, in the case presented, Congress would not have meant the court to take up an issue under Sections 206-207, which leaves 208 before the FCC.

[3] Re myself. It is my position that I remain a party in 13-85 and the related 11-71, including due to still being the majority interest holder in the AMTS licensee entities involved; since I have a pending appeal of the "Sippel Order" that removed me from 11-71; due to my pending petitions that involve MCLM; and for other reasons of Article III standing I have regarding the AMTS license issues underlying this matter (of the April 11 letter etc.).

Re PSI, I have not recently checked if PSI still has any AMTS site based licenses in Southern California, but if it does, it also had (the last I checked) the surrounding co-channel geographic license. But in any case, it would seem useful to send a copy of the Order to PSI. I am not the FCC in any case. But I try to avoid issues regarding FCC rules and proceedings, commencing with threshold ex parte and similar issues.

On Thu, May 11, 2017 at 8:54 AM, Scot Stone <Scot.Stone@fcc.gov> wrote:

Mr. Havens,

The public notice date is the date appearing on the document. See Rule 1.4(b)(5). We will put a copy in the dockets in which it was filed, but that does not change the public notice date.

The 30-day period for filing petitions for reconsideration is statutory, and cannot be waived.

Scot Stone

Deputy Chief, Mobility Division

Wireless Telecommunications Bureau

From: Warren Havens [mailto:wnrvns@gmail.com]

Sent: Thursday, May 11, 2017 9:18 AM

To: Scot Stone <Scot.Stone@fcc.gov>

Cc: Stanislava Kimball <Stanislava.Kimball@fcc.gov>; Jimmy Stobaugh <Jimmy.stobaugh@outlook.com>

Subject: Fwd: FW: Your letter to me denying dec ruling re the issue(s) I pose, Third Cir decision re 80.385

Mr. Stone,

Re:

The April 11, 2017 letter from Scot Stone to Warren Havens which responded to the request for declaratory ruling by Havens (myself) and Polaris PNT BPC on September 25, 2016 filed in dockets 11-71 and 13-85 (the parallel FCC proceedings that the subject case before the Third Circuit decided upon, under private rights of action under 47 USC §§ 410(b), and 206-207, and including 208 issues (herein, the "Order").

Following up on my voice mail of the end of yesterday, I submit here several requests:

Background:

1. I believe the above-referenced April 11 letter is an FCC Order and may be subject to filing of a Reconsideration request under 47 USC §405 and related FCC rules. The April 11 letter concludes "IT IS ORDERED" and it is otherwise an Order as I understand relevant case law. While it denies in part (and does not respond in part) to the positions expressed in the subject request for declaratory ruling by Havens and Polaris, it nevertheless is an official decision by the FCC interpreting, in binding manner, FCC rule sections, as well as this Third Circuit decision concerning FCC rules and rulings, and parts of the Communications Act involved.

See: Wilson v Belo, 87 F.3d 393; 1996 U.S. (Ninth Cir., 1996): An FCC Declaratory Ruling fits the statutory definition of an "order." And APA explicitly provides that "the agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. § 554(e).) *Also see:* 47 USC §401(b): "Orders of Commission If...that court determines that the order was regularly made and duly served...the court shall enforce obedience....

2. The due date is *today* for a filing, if I decide to do so, of a petition for reconsideration or other request for administrative review (together herein, "Reconsideration") of the Order noted above (today is 30 days past the date of the Order),* unless you confirm to me, in a way I can rely upon, that it is not due today because (if you agree I am right) the Order has not yet been placed on any sort of public notice, and thus the 30-day time-period for filing for any Reconsideration, that runs from the public-notice date, has not yet begun: I do not see any such indication on the Order of any publication.

Requests

I respectfully request that you or another FCC staff person, by 4 pm eastern time today:

1. Place a copy of the Order on public notice such as by filing a copy in dockets 11-71 and 13-85 the Order. I believe this will satisfy 401(b) "duly served" component cited above because the relevant parties that will be affected by the Order are parties in those dockets (as I have informed the FCC, I allege I am a party, and I object to cases where I have not been served);

and please inform me if you have or have not done item 1, due to the 30-day timing reasons described in the Background item 2 above.

2. a. If you decide to place a copy of the Order in dockets 11-71 and 13-85, I then request that you confirm that said placement action commences the 30-day period for submitting a timely request for Reconsideration of the Order.

b. If you decide to not place a copy of the Order in dockets 11-71 and 13-85, I then request that you grant to me and Polaris a 14 day period past today (the 30-day period noted above that ends today), on the basis that the Order does not indicate in any way that it was placed in any sort of public notice ("duly served" under 47 USC 401(b) - see above) and due to the FCC oversight, it is fair and reasonably to grant this 14-day extension request.

Respectfully,

/s/

Warren Havens

For myself

And as President of Polaris PNT PBC

----- Forwarded message -----

From: **Stanislava Kimball** <Stanislava.Kimball@fcc.gov>

Date: Fri, May 5, 2017 at 11:05 AM

Subject: FW: Your letter to me denying dec ruling re the issue(s) I pose, Third Cir decision re 80.385

To: Warren Havens <wrrnvns@gmail.com>

Cc: Jimmy Stobaugh <Jimmy.stobaugh@outlook.com>, Scot Stone <Scot.Stone@fcc.gov>

Dear Mr. Havens:

Please find attached a copy of the letter you requested.

It does not appear in any FCC records accessible publicly, without a FOIA request.

There are no parties other than yourself regarding this decision.

Regards,

Stana B. Kimball

Attorney-Advisor

Mobility Division/Wireless Telecommunications Bureau

Federal Communications Commission

[202-418-1306](tel:202-418-1306)